STATE OF MICHIGAN

COURT OF APPEALS

JILES SEARCY, Plaintiff-Appellant,	UNPUBLISHED January 4, 2002
V	No. 228271 WCAC
CHRYSLER CORPORATION, Defendant-Appellee.	LC No. 95-000008

Before: Bandstra, C.J., and White and Collins, JJ.

WHITE, J. (*dissenting*).

I respectfully dissent. I do not agree that the law of the case doctrine precluded the WCAC from considering whether plaintiff is entitled to separate awards against each employer. Rather, the law of the case doctrine required the WCAC to address the merits of the issue. The issues before us in this appeal flow from the Supreme Court's remand to this Court for consideration as on leave granted, and the consequent reversal and remand to the WCAC by a panel of this Court "for further consideration in light of its ruling in *McCalla* [*v Marine City Nursery, Inc*, 10 MIWCLR 1445, 1997 ACO # 504], regarding the continuing viability of *Hairston* [*v Firestone Tire & Rubber*, 404 Mich 104; 273 NW2d 400 (1978)]." *Searcy v Chrysler Corp*, unpublished opinion per curiam of the Court of Appeals, issued 8-3-99 (Docket No. 209191). The Court of Appeals opinion reversing and remanding to the WCAC stated in pertinent part:

> Plaintiff Jiles Searcy appeals by leave granted from an order entered by the . . . [WCAC] denying his petition to reduce the amount by which defendant Chrysler Corporation is allowed to coordinate pension and other benefits against its worker's compensation liability. This Court initially declined to grant leave and plaintiff sought leave to appeal in the Supreme Court. While leave was pending, the WCAC issued an opinion in *McCalla,* [*supra,*] **which called into question the WCAC's original decision in this case finding that *Hairston,* [*supra*], was no longer good law following the 1980 amendments to the [WDCA].** The Supreme Court then denied leave, but remanded to this Court for consideration as on leave granted.
>
> The WCAC's original decision allocating payment of disability benefits between Chrysler Corporation and the City of Detroit was not at issue in the WCAC decision that is presently before this Court. **However, in light of the WCAC's**

> **subsequent decision holding that *Hairston, supra,* remains good law, and calling into question its original decision in this case, we remand to the WCAC for reconsideration of the issue of dual recovery and coordination of benefits.**

Defendant interlocutorily appealed this decision to the Supreme Court, without success. The Supreme Court's order denying leave stated that "we are not persuaded that the question presented should be reviewed by this Court prior to the proceedings ordered by the Court of Appeals and any further subsequent review by the Court of Appeals."[1]

On remand, the WCAC affirmed, and its determination was based solely on res judicata grounds:

> . . . the Commission's 1992 decision [*Searcy I*] was challenged at the higher courts and . . . both the Court of Appeals and the Supreme Court had the opportunity to correct the alleged "error" of the Commission. Both chose not to change the Commission's decision, and it became final. Plaintiff cannot now re-litigate that underlying entitlement determination. . . . The final decision of the Appellate Commission in the first *Searcy* case controls plaintiff's entitlement to benefits on the issue of dual recovery and coordination of benefits."

Because I believe the WCAC's opinion stood this Court's directive on remand on its head, I would reverse and remand to the WCAC for consideration **on the merits** of the dual recovery and coordination of benefits under *McCalla* and *Hairston, supra,* as directed by the prior opinion of this Court.

/s/ Helene N. White

[1] The Supreme Court's order is dated March 28, 2000.